IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 233 of 1995

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

COMMISSIONER OF INCOME TAX

Versus

BHAGWATI SHIP BREAKING IND

Appearance:

1. INCOME TAX REFERENCE No. 233 of 1995
MR MANISH R BHATT for Petitioner No. 1
NOTICE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 16/01/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

In this reference at the instance of the Revenue, the following question is referred for our opinion, in respect of the assessment years 1986-87 to 1988-89:

"Whether, the Appellate Tribunal is right in law and on facts in holding that ship breaking activity has to be considered as a manufacturing activity and accordingly the assessee was entitled to relief u/s. 80HHA and 80-I?"

2. We have heard Mr. M.R. Bhatt, learned Standing Counsel for the revenue. Though served, none appeared on behalf of the respondent - assessee.

3. Our attention is drawn to the decision of another Division Bench of this Court in Commissioner of Income-Tax v. Vijay Ship Breaking Corporation, 2003 (261) ITR 113, taking the view that ship breaking activity was not an activity of manufacture or production of any article or thing for the purposes of availing of the benefit of deductions under sections 80HH and 80-I of the Income-Tax Act, 1961. Since the provisions of Section 80HH-A are similar, in so far as the controversy involved in the present reference is concerned, we respectfully follow the aforesaid decision and answer the question in the negative, i.e., in favour of the Revenue and against the assessee.

4. The reference accordingly stands disposed of.

(M.S. Shah, J.)

(A.M. Kapadia, J.)

(karan)